



INSURANCE

Dave Heineman
Governor

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Director

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Legislative Bill 875 Signed by Governor Heineman

The Governor signed LB 875, this year's "Department Bill" on March 13, 2006. Although the bill carries an emergency clause making it operative when the Governor signed the bill, the only section effective immediately is the section dealing with title insurer reserves. One section, withdrawing from the Interstate Insurance Receivership Compact, is effective December 31, 2007. The remainder of the bill is effective three calendar months after the adjournment of the 2006 session, or July 14. LB 875 included the following provisions.

Suitability—The bill adopted the NAIC Senior Protection in Annuity Transactions Model. While most states that have adopted this model have adopted it as a regulation, in recognition of Nebraska case law restricting the scope of agency rulemaking authority, the Legislature adopted this as a statute.

The act sets standards and procedures for recommendations made by insurance producers and insurers to senior consumers regarding annuity transactions. It requires that the insurance producer, or insurer if an insurance producer is not involved, must have reasonable grounds to believe that the annuity transaction recommendation is suitable for the senior consumer based on the facts disclosed by the senior consumer before making a recommendation to a senior consumer under the act. It requires the insurance producer or insurer to obtain information to make this recommendation, and those insurers or their designees establish and operate a system designed to monitor these transactions to assure compliance with the act. A violation of the act is an Unfair Trade Practice. See Sections 13 through 19 of the bill.

(LB 875 summary continued)

Managing General Agents Act—The bill updates the Nebraska MGA Act to conform more exactly to the NAIC Model. See Sections 7 through 11 of the bill.

Receivership Compact Withdrawal—LB 875 withdrew Nebraska's participation from the Interstate Insurance Receivership Compact in view of the recommendation of the representatives of the compacting states that the compact be dissolved and the remaining assets returned to the compacting states. See Section 18 of the bill.

Title Insurer Reserves—LB 875 amended the reserving requirements for title insurers from a split standard with one level of reserves for transactions above \$500,000, and a lower one for transactions below that amount, to a flat rate of 17 cents per one thousand dollars of net retained liability for each title insurance policy. The proposed language would also provide a standard to allow a title insurer transferring its domicile to the state of Nebraska to adjust reserves. See Section 3 of the bill.

Motor Vehicle Service Contracts—As amended by Senator Beutler, LB 875 codifies "first dollar" requirement for Motor Vehicle Service Contract Act reimbursement policies sold in Nebraska as set out in a Bulletin issued by the Department of Insurance. That amendment also requires motor vehicle service contracts to include notices regarding the guaranty fund and solvency regulation of non-domestic insurers of reimbursement contracts. See Sections 4, 5, and 6 of the bill.

Cleanup:

Out of state trusts term of art clean up—Changes terminology in 2005's provision that applies Nebraska mandates to certificates issued out of state in states that explicitly do not extend their mandates to persons residing out of state. Last year's bill applied to "certificates" issued for delivery in a state, when it should have referred to "policies" issued for delivery. See Section 1 of the bill.

Prohibiting manuscripting of workers' compensation forms—Technical cleanup was done to specify that insurers could not write workers' compensation insurance on manuscript forms. The section relating to manuscripting wasn't included in LB 119 and the change to the Rate and Form Act inadvertently allowed manuscripting. Workers' compensation forms need to be exempted from the manuscripting provisions because of the highly specific requirements for workers' compensation coverage under Nebraska law. See Section 12 of the bill.

Group life insurance premium—This legislation is a technical amendment to the group life sections to bring the statute into conformity with the NAIC Model. Nebraska currently has old model language, found at Neb.Rev.Stat. §44-1602 (2), that prohibits employees paying for the whole cost of group life coverage. The bill would allow insurers to offer employers group life insurance policies for which employees are paying part of the premium, even if less than seventy five percent of the employees participate. See Section 2 of the bill.

LEGAL DIVISION

Status of GAP Contracts in Nebraska

A debt cancellation contract such as a GAP contract is a contract in which a lender agrees to extinguish the debt of the borrower if certain specified events occur.

A debt cancellation contract such as a GAP contract is a contract in which a lender agrees to extinguish the debt of the borrower if certain specified events occur. The borrower, in turn, pays an additional fee for the debt cancellation contract or provision. Generally, debt cancellation contracts would be considered insurance under Nebraska law.

Debt cancellation and deficiency waiver contracts fit the definition of insurance.

The Nebraska Supreme Court, in *Norwest Corp. v. State*, 253 Neb. 574, 583 (1997), listed the elements required for something to be considered “insurance” under Neb.Rev.Stat. §44-102: (1) the existence of a contract whereby, (2) for a consideration, (3) one party (the insurer) promises to pay money or perform a valuable act for the benefit of the other party (the insured), (4) upon the happening of a stated hazard or peril that results in a loss to the insured.

Debt cancellation and deficiency waiver contracts fit the definition of insurance. First, the deficiency waiver and debt cancellation agreements are, by definition, contracts in which both parties would have to show their agreement, such as by signing the contracts, in order to be valid and enforceable. Second, the consumer would generally be required to pay an additional amount of funds in order to obtain the deficiency waiver and debt cancellation contract or addendum to the agreement. Third, the lender promises to cancel or suspend the borrower’s debt if certain specified events occur, which is a valuable act to the borrower who would otherwise have to continue repaying the loan. Finally, the debt would only be cancelled if certain specified events resulting in a loss to the borrower occur, such as the total loss of a vehicle or the death of the borrower.

GAP contracts, as a form of debt cancellation contract, would also be an insurance product and anyone selling or issuing such contracts in this state would need to comply with the Insurance Code.

GAP contracts, as a form of debt cancellation contract, would also be an insurance product and anyone selling or issuing such contracts in this state would need to comply with the Insurance Code.

National banks occupy a special position with regard to products such as debt cancellation contracts since such banks are governed under Federal law, specifically the National Bank Act. Generally, the Department would not have authority over debt

As a general rule, debt cancellation and deficiency waiver contracts fall within the definition of insurance and anyone who offers such contracts in this state needs to comply with the Insurance Code.

cancellation contracts or contract addendums offered directly to a borrower by a national bank in its role as lender. However, it is again important to remember that as a general rule, debt cancellation and deficiency waiver contracts fall within the definition of insurance at Neb.Rev.Stat. §44-102, and anyone who offers such contracts in this state needs to comply with the Insurance Code.

A copy of bulletin CB-109, "GAP Contracts in Nebraska," was issued on March 31, 2006, and can be found at www.doi.ne.gov.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1648 Jeffrey R. Morgan Kearney, NE	Violated <u>Neb.Rev.Stat. §44-4059(1)(h)</u> . Used fraudulent, coercive or dishonest practices.	Consent Order Reimburse irrevocable trust 1/12/06
A-1651 George E. Gulbranson Omaha, NE	Violated <u>Neb.Rev.Stat. §§44-4059(1)(b) and 44-4065(2)</u> . Violated any insurance law; failed to report criminal prosecution to the department within 30 days.	Consent Order Producer license revoked 1/17/06
A-1652 Bradley J. McIver Omaha, NE	Violated <u>Neb.Rev.Stat. §44-4059(1)(b), (e), (g) & (h)</u> and Unfair Insurance Trade Practices Act; violated any insurance law; misrepresentation; committed unfair trade practices; used fraudulent, coercive or dishonest practices or financial irresponsibility.	Consent Order \$500.00 admin. fine and must take five extra hours of continuing education 3/8/06
A-1653 Stephen D. Johnson Omaha, NE	Violated <u>Neb.Rev.Stat. §§ 44-4059(1)(d) & (h)</u> . Improperly withheld, misappropriated, or converted money; used fraudulent, coercive or dishonest practices or financial irresponsibility.	Order Producer license revoked 3/22/06
A-1656 Stephanie D. Halldorson Omaha, NE	Application for producer license denied.	Order Producer license granted 3/30/06
A-1658 Peter N. Lahti Omaha, NE	Application for producer license denied.	Order Producer license granted 3/30/06

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1516 AF&L Life Insurance Company Warrington, PA	Request for termination of suspension of company's certificate of authority due to financial improvement.	Order Suspension of Certificate of Authority terminated 3/31/06
C-1547 Transamerica Life Insurance Company Cedar Rapids, IA	Violated <u>Neb.Rev.Stat.</u> §44-1540(2) and Title 210 NAC Ch. 61 §§008.02 & 008.03. Failed to acknowledge claims submitted within a reasonable time; failed to send communication regarding unresolved claims within the mandatory timeframe; failed to deny or send payment of claims within mandatory timeframe.	Consent Order \$750 admin. fine and make procedural changes as outlined in the order 2/16/06
C-1551 American Casualty Company of Reading, Pennsylvania Chicago, IL	Violated <u>Neb.Rev.Stat.</u> §44-1540(3) & (4), Title 210 NAC Ch. 61 §§006.02 & 008.02. Failed to implement standard procedures for claims settlement; failed to act in good faith when liability is clear in claims settlement; failed to respond to department communications within 15 business days.	Consent Order \$1,000 admin. fine 2/9/06

The Department recommends that policies and procedures be developed and maintained to track reporting obligations, and that all abandoned property be reported to the State Treasurer annually.

Reporting Abandoned Property to State Treasurer

Nebraska law requires businesses to report and deliver abandoned property to the State Treasurer. See Neb. Rev. Stat. §69-1301 et seq. Failure to comply with these reporting laws could result in an audit, and could result in the assessment of penalties and interest. The Department recommends that policies and procedures be developed and maintained to track reporting obligations, and that all abandoned property be reported to the State Treasurer annually.

From January 1, 2006 to June 30, 2006 the State Treasurer is offering amnesty from penalties and interest when abandoned property that should have been reported to their office in a prior year is delivered to their office by June 30, 2006. For additional information, check the State Treasurer's website at www.treasurer.org, or contact the State Treasurer's office at (402) 471-8497.

Court Cases

Avery v. State Farm Mut. Auto. Ins. Co., 74 U.S.L.W. 3503 (March 6, 2005)

This case involves a class-action lawsuit filed in Illinois state court against State Farm for its use of non-OEM parts (aftermarket crash parts) in repairs and representation that these are quality parts. The class was certified at the lowest court, the circuit court, to include State Farm automobile policyholders in 48 states. The two theories of recovery were breach of contract according to the provisions of the insurance policies and violation of the state Consumer Fraud Act. The circuit court awarded in excess of 1 billion dollars for compensatory damages, punitive damages, and disgorgement. The appellate court modified the award to exclude disgorgement.

The Supreme Court of Illinois reversed the appellate court, finding that the certification of the nationwide class by the circuit court was an abuse of discretion. The Illinois class action certification rule is modeled on Federal Rule of Civil Procedure 23 and has 4 requirements for the certification of a class action: 1—numerosity; 2—commonality ("there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members"); 3—adequacy of representation; and 4—appropriateness. State Farm argued at all levels that there were no common questions that predominate over questions affecting individual members because the insurance policies in different states contained different provisions concerning replacement parts. The plaintiffs prevailed at the trial and appellate court levels, arguing that the different provisions were subject to uniform interpretation. The Supreme Court decided that the contracts did not impose a common obligation, so certification of the class was improper. The court then considered whether any subclass could recover and determined that no subclass had successfully proved damages.

Plaintiffs appealed by writ of certiorari to the United States Supreme Court, arguing that the due process clause of the 14th amendment ought have compelled Justice Lloyd Karmeier to recuse himself because of donations to his campaign by a group founded by a State Farm lobbyist. The Supreme Court denied certiorari on March 6, 2006.

Miller v. Commercial Contrs. Equip., Inc., 14 Neb App. 606 (March 28, 2006)

On April 9, 1999, David Miller suffered an injury to his back at the L4-5 level. At the time, he worked for Commercial Contractors, whose workers' compensation carrier was Zurich American Insurance. After surgery, Miller achieved full recovery and returned to work in April 2000. Miller's injury returned in February 2002. At this time, Travelers Indemnity and Phoenix Insurance Company were Commercial Contractor's insurance carriers.

Prior to trial, the three insurance companies stipulated that the injury was a recurrence, not an aggravation of the 1999 injury, thus relieving Travelers and Phoenix of any liability. In spite of this, the trial court found that the injury was an aggravation, not a recurrence. Travelers was allowed to intervene before the review board. The board affirmed the trial court. The primary issue before the Nebraska Court of Appeals was whether the stipulation between the insurance companies precluded a finding contrary to the stipulation.

The Nebraska Court of Appeals indicated agreement with the trial court and review panel that the court could determine that the injury was an aggravation rather than a recurrence because the stipulation between the insurance companies was not binding on the plaintiff, Miller. The Nebraska Court of Appeals also determined that allowing the intervention of Travelers on appeal after it had voluntarily exited the case was plain error, so Traveler's appeals were dismissed.

Ron Lobb, Insurance Analyst, has retired after 13 years of service with the Department.

LeAnn Hammar will assume the responsibility for reviewing all health policy forms, endorsements, riders and applications.

David Morris will join the division on May 1 as an insurance analyst and will assume the responsibility for reviewing all life, annuity, variable life, and variable annuity policy forms, endorsements, riders, and applications.

LIFE AND HEALTH DIVISION

Personnel Changes

After 13 years with the Department of Insurance, Ron Lobb, Insurance Analyst, retired effective April 3. With Ron's retirement, LeAnn Hammar, Insurance Analyst, will assume the responsibility of reviewing all health policy forms, endorsements, riders, and applications. Her responsibilities will include major medical, long-term care, dread disease, disability income, stop loss, Medicare supplement, and dental policy forms.

David Morris will join the division on May 1 as an insurance analyst. David comes to the division with ten years of experience as a compliance analyst with Security Financial Life Insurance Company. David has experience developing, drafting, and filing life and annuity contracts. He has a Bachelor of Arts degree from the University of Nebraska and a paralegal certificate from Wesleyan University. David will assume the responsibility for reviewing all life, annuity, variable life, and variable annuity policy forms, endorsements, riders, and applications.

John Rink will continue his duties of reviewing all health insurance rates; major medical, Medicare supplement, disability income, long-term care, dread disease, and stop loss. In addition, John has responsibilities involving the Small Employer Health Reinsurance Program and the Comprehensive Health Insurance Program. John will continue playing a key role in multiple NAIC activities such as the Interstate Compact Standards committees and the Life and Health Actuarial Task Force.

Deb Cunningham continues to be responsible for processing all filings and filing fees received by the division, and is also responsible for coordinating company visits, answering status checks, and reviewing all Medicare supplement and long-term care advertising.

Funding Agreements, which are addressed in Neb.Rev.Stat. §44-708, will be stamped FILED rather than APPROVED.

Funding Agreements will be reviewed and evaluated by the division for compliance with several factors.

Funding Agreements

Funding Agreements are addressed in Neb.Rev.Stat. §44-708, which was part of the 2004 Department of Insurance legislative bill. The statute, in its entirety, may be found at <http://srvwww.unicam.state.ne.us/Laws2005.html>.

Funding Agreements will be stamped FILED rather than APPROVED. The division will review and evaluate Funding Agreements for compliance with the following:

- The company is authorized to write line 1; life insurance.
- The Funding Agreement does not include any benefits that are contingent upon mortality or morbidity, or other insurable event.
- The Funding Agreement holders' process to access funds is clearly explained or self-evident; for example, a checking account-type arrangement.
- The guarantees are reasonable in relationship to investment returns and fair in relationship to all classes of funding agreement participants. Examples include promised interest rates are not too high in relationship to rates of investment income, or unreasonably higher for certain participants.
- Note - multiple allocation accounts are acceptable.

Please contact Jeanne Daharsh at jdaharsh@doi.state.ne.us if you have any questions regarding Funding Agreement filings.

PRODUCER LICENSING DIVISION

Record Retention

As more producer and agency records have shifted to electronic formats, such as electronic imaging and databases, many questions have been specific to requirements for electronic records.

The Department occasionally receives questions about producer and agency record retention requirements. As more producer and agency records have shifted to electronic formats, such as electronic imaging and databases, many questions have been specific to requirements for electronic records.

It is important to recognize that Nebraska Department of Insurance requirements may not be the only applicable requirements.

The primary Department requirements reference market conduct records for regulatory purposes, however, other specific requirements exist relating to such matters as privacy, title insurance records, and life illustrations.

It may be helpful to give consideration to questions regarding printing, storage, and access when evaluating retention of electronic records.

It is important to recognize that Nebraska Department of Insurance requirements may not be the only applicable requirements. Such factors as agency contracts with insurers, statutes of limitations for contractual matters, tax record requirements, disaster planning/recovery needs and other business purposes should also be considered. Those factors are not addressed in Nebraska insurance law. The primary Department of Insurance requirements reference market conduct records for regulatory purposes. Those provisions are located in the Nebraska Insurers Examination Act. Other specific requirements exist relating to such matters as privacy, title insurance records, and life illustrations.

Neb.Rev.Stat. §44-5905(2)(B) states:

Every company or person subject to the act shall retain market conduct records for four years following the completion of a transaction relating to the insurance business and affairs of such company or person. For purposes of this subdivision, market conduct records means all books, records, accounts, papers, documents, and computer or other recordings relating to transactions with insureds, certificate holders, claimants, insurance producers, other insurers, subrogees, and subrogors and recordings related to its trade practices, underwriting, rate and form practices, advertising, regulatory matters, and other affairs of such company or person.

(ii) The books, records, accounts, papers, documents, and computer or other recordings described in subdivisions (2)(b)(i)(A) and (B) of this section and maintained in electronic, computer, micrographic, or other form shall be maintained in a form capable of accurate duplication on paper.

When evaluating retention of electronic records, it may be helpful to give consideration to other such questions as:

- Can the records be printed out to paper, if necessary?
- Will the record storage medium safely last for the required record retention period?
- If I use a software vendor, will the agency still have access to the records in the event the vendor contract is terminated, or if the vendor goes out of business?

Questions concerning the retention of producer records can be directed to Bruce Ramge, Chief of Market Regulation, at bramge@doi.state.ne.us.

- Will electronic records still be accessible if the software program is updated or discontinued?
- Are agency contract requirements with insurance companies being met?
- Is customer personal information being adequately safeguarded?

Questions concerning the retention of producer records can be directed to Bruce Ramge, Chief of Market Regulation, at bramge@doi.state.ne.us.

FRAUD DIVISION

Sixth Annual Insurance Fraud Seminar

Mark your calendars for the sixth annual Insurance Fraud Seminar to be held at Eugene T. Mahoney State Park on Tuesday, June 20, 2006. This year's agenda, although having specific subject matter, should prove to be of interest to those involved in the property and casualty, as well as the life and health insurance industry.

The Insurance Fraud Prevention Division is looking forward to Alan Haskins with the National Association of Insurance Commissioners updating attendees on what is happening at the national level to combat insurance fraud.

The National Insurance Crime Bureau (NICB) will be providing presentations on the relationships of medical and legal professions as applied to bodily injury claims. The NICB will also provide a short presentation on "staged accidents" that the attendees will surely find of interest.

Dr. Scott Misek, Heritage Musculoskeletal Assessment Center in Omaha, will provide an informative afternoon as he speaks about chiropractic fraud and abuse. Dr. Misek will also be taking questions from the audience, so look forward to the afternoon as truly an educational experience.

Seating will be limited and has filled early in the past. For a copy of the seminar brochure, contact Connie Drake, Administrative Assistant, at cdrake@doi.state.ne.us

EXAMINATION DIVISION

Pre-Need Exams Completed During First Quarter, 2006

Brewer, Korisko, Staskiewicz, Larkin, LLC
Brockhaus-Harlan Funeral Home
Dorr & Clark Funeral Home, LLC
Griffiths-Hovendick Chapel, Inc.
Jack Becker Funeral Home, Inc. DBA Becker-Hunt Funeral Home
Kuncl Funeral Home, Inc.
Kuzelka Funeral Home, Inc.
Metz Mortuary, Inc.
Mohr Funeral Home

Financial Examinations Completed During First Quarter, 2006

American Family Life Assurance Company of Columbus
Arch Excess & Surplus Insurance Company
Central States Health & Life Co. of Omaha
Delta Dental Plan of Nebraska
Farmers Mutual United Insurance Company
FirstComp Insurance Company
Nebraska Farmers Mutual Reinsurance Association
Security Financial Life Insurance Co.

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



Department Calendar

- May 29: Department Closed - Memorial Day
- June 20: Annual Fraud Seminar (registration required)
Eugene T. Mahoney State Park
- July 4: Department Closed - Independence Day



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